

**REMARKS****Summary of the Office Action**

In the Office Action the drawings are further objected to for certain informalities. Claims 1-8 are withdrawn from consideration by the Examiner as being directed to a non-elected invention.

**Summary of the Response to the Office Action**

Applicants amend claims 1-8 and traverse the constructive Election applied in the Office Action. Accordingly, claims 1-8 are pending for further consideration.

**Constructive Election**

The Office Action states that “claims 1-8 are withdrawn from consideration as being directed to a non-elected invention,” and therefore “no claims remain for examination.” While Applicants have amended the claims to relate to the allegedly elected invention and also plan to file a divisional application, Applicants respectfully submit that the constructive Election applied by the Examiner is improper at least because it does not comply with M.P.E.P. § 816.

The Office Action fails to state the particular reasons why the inventions as claimed are independent or distinct. M.P.E.P. § 816 states that a “mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given.” More specifically, the Office Action should “point out the reasons why he or she considers the subcombination to have utility by itself or in other combinations, and why he or she considers that the combination as claimed does not rely on the subcombination as its essential distinguishing part.” See M.P.E.P. § 816.

Because the Office Action fails to comply with M.P.E.P. § 816, the Election is improper and should be removed. Moreover, as indicated above, the election is improper in view of the amendments. Accordingly, Applicants respectfully traverse the Election. An action on the merits with respect to claims 1-8 is therefore respectfully requested.

### **Drawings**

To overcome the Office Action's objection of the drawings, Applicants remove the nail magazine features recited in claim 1 as suggested by the Examiner. Accordingly, Applicants respectfully request that the objection to the drawings be removed.

### **All Claims are Allowable**

Applicants respectfully submit that newly amended claims 1-8 are allowable. For example, newly amended independent claim 1 is allowable at least because it discloses "a plurality of nails . . . wherein said nails are connected to each other by the connecting bands substantially near an upper end and a lower end of each of said shaft portions, such that when the stick-type connected nails are superposed adjacent to other stick-type connected nails, the vertical position of respective heads thereof are offset." Additionally, claims 2-8, which depend from independent claim 1, are allowable at least because their base claim is allowable, as well as for the additional features recited therein. Applicants respectfully submit that at least these features are not disclosed, taught, or suggested by the references of record.

**CONCLUSION**

In view of the foregoing, Applicants respectfully request reconsideration and the timely allowance of the pending claims. Should the Examiner feel that there are any issues outstanding after consideration of the response, the Examiner is invited to contact the Applicants' undersigned representative to expedite prosecution.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-0310. If a fee is required for an extension of time under 37 C.F.R. §1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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